

UNITED STATES INTERNATIONAL TRADE COMMISSION

STEEL WIRE ROPE FROM CHINA AND INDIA

Investigations Nos. 731-TA-868-869 (Final)

DETERMINATIONS AND VIEWS OF THE COMMISSION

(USITC Publication No. 3406, March 2001)

# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-868-869 (Final)

## STEEL WIRE ROPE FROM CHINA AND INDIA

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from China and India of steel wire rope, provided for in subheadings 7312.10.60 and 7312.10.90 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

### BACKGROUND

The Commission instituted these investigations effective March 1, 2000, following receipt of a petition filed with the Commission and the Department of Commerce by The Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (Committee),<sup>2</sup> Washington, DC. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of steel wire rope from China and India were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of November 9, 2000 (65 FR 67402). The hearing was held in Washington, DC, on February 21, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

<sup>2</sup> The Committee comprises the following U.S. producers: Bergen Cable Technology, Inc.; Bridon American Corp.; Carolina Steel & Wire Corp.; Continental Cable Co.; Loos & Co., Inc.; Paulsen Wire Rope Corp.; Sava Industries, Inc.; Strandflex, a division of MSW, Inc.; and Wire Rope Corp. of America, Inc.

## VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that an industry in the United States is not materially injured or threatened with material injury by reason of imports of steel wire rope from China and India that are sold in the United States at less than fair value (“LTFV”).<sup>1 2 3</sup>

### **I. DOMESTIC LIKE PRODUCT AND INDUSTRY**

#### **A. In General**

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>4</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a {w}hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>5</sup> In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . .”<sup>6</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>7</sup> No single factor is dispositive, and the Commission

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<sup>1</sup> Whether the establishment of an industry is being materially retarded is not at issue in these investigations.

<sup>2</sup> In its preliminary determinations, the Commission determined that subject imports from Thailand were negligible for purposes of assessing present material injury. Steel Wire Rope from China, India, Malaysia, and Thailand, Inv. Nos. 731-TA-868-871 (Preliminary), USITC Pub. 3294 (“Prelim. Det.”) at 8-9 (April 2000). With respect to the threat of material injury, Commissioners Hillman, Koplan, and Okun determined that, although there was a potential that subject imports from Thailand would imminently account for more than 3 percent of the volume of all such merchandise imported into the United States, there was no reasonable indication that an industry in the United States was threatened with material injury by reason of subject imports from Thailand. Id. at 9. Vice Chairman Miller and Commissioner Askey determined that there was not a potential that subject imports from Thailand would imminently account for more than 3 percent of the volume of all such merchandise imported into the United States, and therefore did not reach the issue of threat of material injury. Id. at n.46. Chairman Bragg dissented. Id. at 3 n.1. She found that there was a reasonable indication that an industry in the United States was threatened with material injury by reason of imports from Thailand that were alleged to be sold at LTFV. See id. Dissenting Views of Chairman Lynn M. Bragg Regarding Thailand. The Commission’s investigation of certain steel wire rope from Thailand was therefore terminated. See 65 Fed. Reg. 24505 (Apr. 26, 2000) (notice of Commission’s negative preliminary determination on subject imports from Thailand) and 19 U.S.C. § 1671b(a)(1).

<sup>3</sup> The Department of Commerce found in its final dumping determination that subject imports from Malaysia were not sold at less than fair value. 66 Fed. Reg. 12759, 12761 (Feb. 28, 2001). The Commission terminated its investigation as to subject imports from Malaysia effective February 28, 2001. 66 Fed. Reg. 13965, 13965 (Mar. 8, 2001). The Department also determined that merchandise produced by Chinese manufacturer Fasten Co., Ltd. and exported by Fasten Group Import and Export Co., Ltd. was not sold at less than fair value. 66 Fed. Reg. 12759, 12761 (Feb. 28, 2001).

<sup>4</sup> 19 U.S.C. § 1677(4)(A).

<sup>5</sup> 19 U.S.C. § 1677(4)(A).

<sup>6</sup> 19 U.S.C. § 1677(10).

<sup>7</sup> See, e.g., NEC Corp. v. Dep’t of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.<sup>8</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>9</sup> Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise that is subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>10</sup>

## **B. Product Description**

In its final determinations, Commerce defined the imported merchandise within the scope of these investigations as steel wire rope, encompassing:

ropes, cables, and cordage of iron or carbon or stainless steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under subheadings: 7312.10.6030, 7312.10.6060, 7312.10.9030, 7312.10.9060, and 7312.10.9090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although HTSUS subheadings are provided for convenience and Customs Service purposes, the written description of the scope of this investigation is dispositive.<sup>11</sup>

Accordingly, the scope covers three varieties of steel wire rope: bright carbon steel wire rope (manufactured from ungalvanized carbon steel wire), galvanized carbon steel wire rope (manufactured from galvanized, or zinc-coated, carbon steel wire), and stainless steel wire rope (manufactured from stainless steel wire).<sup>12</sup> Most types of steel wire rope, regardless of the principal constituent material, consist of three basic components: a core, wires that form strands, and strands laid helically around the

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<sup>7</sup> (...continued)

Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>8</sup> See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

<sup>9</sup> Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

<sup>10</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

<sup>11</sup> 66 Fed. Reg. 12759, 12760 (Feb. 28, 2001).

<sup>12</sup> Final staff report (as amended by INV-Y-048 (Mar. 15, 2001)), confidential version (“CR”) at I-4 to I-5 and public version (“PR”) at I-4.

core.<sup>13</sup> Steel wire rope is used to transmit force in hundreds of applications ranging from elevators to earth-moving equipment to aircraft control cables.<sup>14</sup>

### **C. Domestic Like Product**

The Commission indicated in its preliminary determinations that in the final phase of these investigations it would examine further whether stainless steel and carbon steel wire rope should constitute separate domestic like products. We also have considered respondents' argument, made late in the final phase of the investigations, that galvanized carbon steel wire rope should constitute a domestic like product separate from other steel wire rope.

#### **1. Stainless Steel and Carbon Steel Wire Rope**

The additional information gathered in the final phase of these investigations supports the finding in the preliminary determinations that a clear dividing line does not exist between stainless steel and carbon steel wire rope.<sup>15</sup> Both types are composed of steel wires formed into multiple strands that are laid helically around a central core.<sup>16</sup> Carbon steel wire rope is stronger and more wear-resistant, while stainless steel wire rope is more corrosion-resistant and less magnetic.<sup>17</sup> The difference in corrosion-resistance is greatly reduced when carbon steel wire rope is galvanized.<sup>18</sup>

Both types of steel wire rope are used to transmit force. Carbon steel wire rope is used where tensile strength is important and abrasion is high, while either galvanized carbon or stainless steel wire rope is used where corrosion-resistance is important.<sup>19</sup> The stainless rope is favored when cleanliness, corrosion-resistance, or reduced magnetic properties are important.<sup>20</sup>

Interchangeability between carbon steel and stainless steel wire rope is limited, in part because of the significantly higher cost of stainless steel.<sup>21</sup> Some substitution occurs between small-diameter wire ropes of galvanized carbon steel and of stainless steel.<sup>22</sup> Because they are less expensive, galvanized products are favored over stainless steel wire rope when both are suitable.<sup>23</sup> Sales to distributors account for roughly \*\*\* percent of domestically-produced carbon steel wire rope and \*\*\* to \*\*\* percent of domestically-produced stainless steel wire rope.<sup>24</sup> Sales to end-users account for the remainder.<sup>25</sup>

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<sup>13</sup> CR at I-5, PR at I-4. Not all stainless steel wire rope contains a core. Petition at 11 n.13.

<sup>14</sup> CR at I-8, II-4; PR at I-7, II-3.

<sup>15</sup> No party argued during these investigations that stainless steel and carbon steel wire rope should constitute separate domestic like products.

<sup>16</sup> CR at I-5, PR at I-4.

<sup>17</sup> CR at I-5, n.12, I-8, I-15; PR at I-4, n.12, I-7, I-11; Petitioners' Prehearing Brief at 5; transcript of Feb. 21, 2001 hearing (revised and corrected copy) ("Hearing Tr.") at 204-05 (testimony of Al Ulrich, General Manager, of distributor Cajan Wire, Inc.).

<sup>18</sup> CR at I-5 n.12, I-8; PR at I-4, n.12, I-7; Hearing Tr. at 204-05 (Ulrich). See CR at I-7, n.15; PR at I-5, n.15.

<sup>19</sup> CR at I-8, I-15; PR at I-7, I-11.

<sup>20</sup> CR at I-5, I-8 to I-9 & n.19, I-15; PR at I-5, I-7 & n.19, I-11.

<sup>21</sup> CR at I-8 to I-9 & n.19, I-15, I-17; PR at I-7 & n.19, I-11, I-12.

<sup>22</sup> CR at I-15, PR at I-11.

<sup>23</sup> Id.

<sup>24</sup> CR and PR at II-1. See CR at I-16, PR at I-11.

<sup>25</sup> CR at I-16, II-1; PR at I-11, II-1.

Both carbon steel and stainless steel wire rope are produced using the same general production processes, sometimes on the same production lines and with the same workers.<sup>26</sup> However, in order to make the stainless steel product, the production equipment must be cleaned of carbon deposits and grease used in making the carbon steel product, although \*\*\* producer of stainless steel wire rope reported that the cleaning operation is not significant.<sup>27</sup> Most producers and purchasers highlighted the differences between carbon steel and stainless steel wire rope in terms of price and corrosion-resistance.<sup>28</sup> Prices for wire rope of stainless steel are considerably higher than prices for wire rope of carbon steel.<sup>29</sup>

Although the information is mixed, on balance, we find that a clear dividing line does not exist between carbon steel and stainless steel wire rope, because both share the same multiple strand construction, are used to transmit force, are sold through overlapping channels of distribution, and are made using the same production processes, often in common manufacturing facilities and by the same production employees. Accordingly, we find that stainless steel wire rope does not constitute a domestic like product separate from carbon steel wire rope.

## 2. Galvanized Carbon Steel and Other Wire Rope

Respondents argue that there is a clear dividing line between galvanized carbon steel wire rope and bright carbon steel wire rope. In order to constitute a separate domestic like product, however, a clear dividing line must also exist between the galvanized rope and stainless steel wire rope.<sup>30</sup> We therefore examine this aspect of the issue as well.<sup>31</sup>

Wire ropes made of bright carbon steel, galvanized carbon steel, and stainless steel are all composed of steel wires formed into multiple strands that are laid helically around a central core.<sup>32</sup> The galvanized carbon steel product has the same physical characteristics as the bright carbon steel product in terms of strength and abrasion resistance, but it is more corrosion resistant because of its zinc coating.<sup>33</sup>

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<sup>26</sup> CR at I-12, PR at I-9 (steel wire rope is produced by (1) drawing rod into wire, (2) stranding wire, and (3) closing strands into rope). CR at I-13 to I-14, PR at I-9, and Hearing Tr. at 113 (Michael Wallace, Vice President, Sales and Marketing, Loos & Company, Inc.), 114 (Charles W. Salanski, Chief Operating Officer, Wire Rope Corporation of America, Inc.). Different stranding and closing equipment is often used to make carbon steel wire rope in the larger diameters in which the stainless product is less frequently produced. CR at I-13 & n.36, PR at I-9 to I-10 & n.36.

<sup>27</sup> CR at I-13 to I-14, PR at I-10, Hearing Tr. at 113 (Wallace).

<sup>28</sup> CR at I-15, PR at I-11, Hearing Tr. at 127 (Wallace), 188 (Reitzel O. Swaim, President of distributor ALP Industries, Inc.), 205 (Ulrich).

<sup>29</sup> CR at I-17, PR at I-12.

<sup>30</sup> Respondents took no position on whether stainless steel wire rope should constitute a separate domestic like product. Posthearing Brief of Respondents at A-11.

<sup>31</sup> Respondents asserted for the first time that galvanized carbon steel wire rope constitutes a separate domestic like product in their Prehearing Brief (see Prehearing Brief of Respondents at Exh. 12) and failed to raise the issue in their comments on the draft questionnaires. As the Commission stated in promulgating rule 207.20(b) in 1996, parties should make data collection requests, particularly those pertaining to like product or cumulation, at the time the draft questionnaires are circulated to the parties for comment, because it is often impracticable to gather data necessitated by argument only made later in the investigative process, “given the need to collect, verify, and analyze data, release data under APO, and receive comments from the parties concerning data before the record closes.” See 61 Fed. Reg. 37818, 37826 (July 22, 1996).

<sup>32</sup> CR at I-5, PR at I-4.

<sup>33</sup> CR at I-5, I-8; PR at I-5, I-7. See CR at I-7, n.15, PR at I-5, n.15.

The galvanized product is stronger and more wear-resistant than stainless steel wire rope.<sup>34</sup> Galvanized carbon steel and stainless steel wire ropes are both corrosion-resistant, but the stainless steel product is more so.<sup>35</sup>

Because they have the same physical characteristics, except regarding corrosion-resistance, it appears that wire rope made of galvanized carbon steel can substitute for wire rope of bright carbon steel in most applications, although the converse is not true. There is also some interchangeability between galvanized and stainless steel wire rope, except where the application requires cleanliness or reduced magnetic properties.<sup>36</sup> As a practical matter, however, differences in price limit interchangeability between wire rope of galvanized carbon steel and stainless steel.<sup>37</sup>

Approximately \*\*\* percent of domestically produced carbon steel wire rope -- both bright and galvanized collectively -- is sold to distributors.<sup>38</sup> Between \*\*\* and \*\*\* percent of domestically produced stainless steel wire rope is sold to distributors.<sup>39 40</sup>

All steel wire rope is produced using three steps: (1) drawing rod into wire; (2) stranding wire; and (3) closing strands into rope.<sup>41</sup> Except for the galvanizing process, galvanized and bright carbon steel wire ropes are made using the same processes. Both are apparently made in the same manufacturing facilities and by the same production employees.<sup>42</sup> Stainless product is also sometimes manufactured using the same production lines and the same workers.<sup>43</sup> Different stranding equipment is often used for larger diameter ropes that are usually made from bright carbon steel.<sup>44</sup> The stainless product runs more slowly on the equipment because it is harder.<sup>45</sup> Before changing to production of stainless product, the equipment must be cleaned of carbon deposits and grease used in making carbon steel product, although one producer reported the problem is not significant.<sup>46</sup>

Customers typically specify whether they want wire rope of galvanized or bright carbon steel.<sup>47</sup> Generally, producers and purchasers highlighted the differences in price and corrosion-resistance between

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<sup>34</sup> Hearing Tr. at 204-05 (Ulrich). See CR at I-10, PR at I-8.

<sup>35</sup> CR at I-5, n.12; PR at I-4, n.12.

<sup>36</sup> CR at I-8 to I-9 & n.19, I-15; PR at I-7 & n.19, I-11.

<sup>37</sup> CR at I-15, PR at I-11.

<sup>38</sup> CR and PR at II-1. See CR at I-16, PR at I-11.

<sup>39</sup> CR and PR at II-1.

<sup>40</sup> The producers accounting for the vast majority of galvanized carbon steel wire rope production did not provide information on channels of distribution separately for galvanized and ungalvanized carbon steel wire rope. \*\*\*, provided useable data on this question because they made galvanized but not bright carbon steel wire rope. \*\*\* sold \*\*\* percent of its galvanized production to distributors, while \*\*\* sold \*\*\* of their galvanized production to end users. Producers' questionnaire responses and Mar. 6, 2001 submission by counsel to domestic producers. See table D-1, CR at D-3 and PR at D-3. Even though domestic production of galvanized product is small compared to production of bright carbon product, it appears that the percentage of galvanized carbon steel wire rope sold to distributors is not very different from the portions of all wire rope of carbon steel sold to distributors (\*\*% percent) or of all wire rope of stainless steel sold to distributors (\*\*% percent). Compare table D-1, CR and PR at D-3 with table C-1, CR at C-4 and PR at C-3.

<sup>41</sup> CR at I-12, PR at I-9.

<sup>42</sup> See Hearing Tr. at 113 (Wallace), 114 (Salanski).

<sup>43</sup> CR at I-13 to I-14, PR at I-9 to I-10, Hearing Tr. at 113 (Wallace), 114 (Salanski).

<sup>44</sup> CR at I-13 & n.36, PR at I-9 to I-10 & n.36.

<sup>45</sup> CR at I-13, PR at I-10.

<sup>46</sup> CR at I-13 to I-14, PR at I-10, Hearing Tr. at 113 (Wallace).

<sup>47</sup> Posthearing Brief of Petitioners at Questions Regarding Galvanized Wire Rope Products at 9.

wire rope of stainless steel and carbon steel.<sup>48</sup> For the galvanized carbon steel product, however, the differences with stainless steel wire rope in corrosion-resistance are less noted. Prices for galvanized carbon steel wire rope appear higher than prices for the bright carbon steel product, based on limited data in the record.<sup>49</sup> Prices for the stainless product, however, are still considerably higher than prices for the galvanized product.<sup>50</sup>

Wire rope of galvanized carbon steel and of bright carbon steel share many of the same physical characteristics, are at least somewhat interchangeable, are likely sold through common channels of distribution, and are made using nearly the same manufacturing processes, in common facilities, and by the same production workers. The two types of rope differ primarily in corrosion-resistance and, as a result, the uses to which they are directed. Galvanized carbon steel wire rope and stainless steel wire rope are both corrosion-resistant, and they can be used for many of the same applications. Channels of distribution overlap for galvanized carbon steel wire rope and stainless steel wire rope, and both are made in common manufacturing facilities and by the same employees. On the basis of these facts, we do not find that a clear dividing line exists between galvanized carbon steel wire rope on the one hand, and bright carbon steel and stainless steel wire rope on the other. Accordingly, we find a single domestic like product consisting of bright carbon steel wire rope, galvanized carbon steel wire rope, and stainless steel wire rope.

#### **D. Domestic Industry and Related Parties**

##### **1. In General**

The domestic industry is defined as “the producers as a {w}hole of a domestic like product.”<sup>51</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>52</sup> Based on our finding that the domestic like product consists of bright carbon steel wire rope, galvanized carbon steel wire rope, and stainless steel wire rope, we conclude that the domestic industry consists of all domestic producers of those products.

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<sup>48</sup> CR at I-15, PR at I-11, Hearing Tr. at 127 (Wallace), 188 (Swaim), 205 (Ulrich).

<sup>49</sup> Tables V-1 to V-6, CR at V-7 to V-12, PR at V-5 to V-9.

<sup>50</sup> CR at I-15, I-17; PR at I-11, I-12.

<sup>51</sup> 19 U.S.C. § 1677(4)(A).

<sup>52</sup> See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

## 2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry as a related party pursuant to 19 U.S.C. § 1677(4)(B). Section 1677(4)(B) allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or that are themselves importers.<sup>53</sup> Exclusion of such producers is within the Commission's discretion based upon the facts presented in each case.<sup>54</sup>

Domestic producers \*\*\* each imported subject merchandise between January 1997 and September 2000, and therefore each is a related party under 19 U.S.C. § 1677(4)(B)(i).<sup>55</sup> \*\*\* indicated that it imported subject merchandise because of "\*\*\*\*".<sup>56</sup> \*\*\* stated that "\*\*\*\*".<sup>57</sup> \*\*\* responded that it "\*\*\*\*".<sup>58</sup> Similarly, \*\*\* stated that it "\*\*\*\*".<sup>59</sup>

However, the ratio of subject imports to domestic production is so small for each of the related parties that we do not believe such imports significantly affect their financial performance, despite the comments of several producers that they imported the product because it is less expensive.<sup>60</sup> The primary interests of these companies are also those of producers, not importers. Accordingly, we find that appropriate circumstances do not exist to exclude any related party from the domestic industry.

## III. CUMULATION

### A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports

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<sup>53</sup> 19 U.S.C. § 1677(4)(A).

<sup>54</sup> Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g., Melamine Institutional Dinnerware from China, Indonesia and Taiwan*, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016, at 14 n.81 (Feb. 1997).

<sup>55</sup> CR at III-6, PR at III-4.

<sup>56</sup> Table III-7, CR at III-8 and PR at III-4.

<sup>57</sup> Id.

<sup>58</sup> Id.

<sup>59</sup> Id.

<sup>60</sup> For 1999, the ratios of imports to production by U.S. producers of subject merchandise from subject countries were \*\*\*. Table III-6, CR at III-7 and PR at III-4.

compete with each other and with domestic like products in the U.S. market.<sup>61</sup> In assessing whether subject imports compete with each other and with the domestic like product,<sup>62</sup> the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.<sup>63</sup>

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.<sup>64</sup> Only a “reasonable overlap” of competition is required.<sup>65</sup>

## **B. Analysis**

The petitions were filed on the same day, thus satisfying the threshold cumulation requirement. We find that there is a reasonable overlap of competition between subject imports from China and India and between subject imports and the domestic like product, although the record also indicates that competition between the domestic like product and subject imports, in particular those from China, is attenuated due to quality and product mix issues.

There is little difference between subject imports from China and India, or between subject imports and the domestic like product, in terms of channels of distribution, geographic availability, or presence in the market. On a yearly basis, from 1997 to 1999 sales to distributors accounted for approximately \*\*\* of shipments of the domestic like product, more than \*\*\* percent of importer shipments of the subject merchandise from China, and between \*\*\* and \*\*\* percent of importer shipments of subject merchandise

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<sup>61</sup> 19 U.S.C. § 1677(7)(G)(i).

<sup>62</sup> The SAA at 848 expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition,” citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

<sup>63</sup> See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

<sup>64</sup> See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

<sup>65</sup> See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

from India.<sup>66</sup> Subject merchandise from both countries and the domestic like product were distributed nationwide and were present in the market throughout the period of investigation.<sup>67</sup>

Two factors, however, limit fungibility between the domestic like product and subject imports. First, subject imports, particularly those from China, are of lower quality than the domestic like product. A majority of purchasers rate quality as the most important factor in steel wire rope purchasing decisions.<sup>68</sup> Ten out of 13 purchasers rate the domestic like product superior in quality to subject merchandise from China.<sup>69</sup> Likewise, various importers and purchasers testified that subject imports from China are inferior in quality to the domestic like product.<sup>70</sup> Various importers and purchasers testified that subject imports from China are too unreliable for use in so-called “critical” or “working” applications, in which failure of the rope would cause injury or damage.<sup>71</sup> Similarly, distributors expressed concern over liability arising out of the failure of any rope they might sell, particularly imports from China.<sup>72</sup> They testified that subject imports from China are used in non-load bearing applications such as in perimeter safety devices in construction projects, or may be purchased off the shelf at hardware stores for various home uses, from uprooting trees to making clotheslines.<sup>73</sup>

Nevertheless, a significant proportion of producers, importers, and purchasers reported that subject imports and the domestic like product are at least sometimes interchangeable and used in the same applications. All \*\*\* producers that made comparisons reported that subject merchandise from China is “always” or “frequently” interchangeable with the domestic like product.<sup>74</sup> Nineteen of 27 importers reported that the two are “always,” “frequently,” or “sometimes” interchangeable.<sup>75</sup> The 19 responding purchasers were split, with 8 reporting that subject imports from China and the domestic like product are used in the same applications, nine reporting that they are not, and 2 indicating that they are sometimes used in the same applications.<sup>76</sup>

Various domestic producers and a domestic distributor testified that the domestic like product competes against subject merchandise from China, and that these imports conform to various industry standards and specifications.<sup>77</sup>

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<sup>66</sup> See responses to producers’ and importers’ questionnaires. See also CR and PR at II-1.

<sup>67</sup> CR at II-1, IV-5 (table IV-3); PR at II-1, IV-2 (table IV-3).

<sup>68</sup> Table II-2, CR at II-7 and PR at II-5.

<sup>69</sup> Table II-7, CR at II-13 and PR at II-8.

<sup>70</sup> Hearing Tr. at 67 (Shawn Burks, President of distributor Wire Rope Specialists), 147-52 (Howard Schloss, Co-Chairman of the Board and Vice President of distributor The Indusco Group), 153-56 (James Larson, Field Coordinator for steel wire rope purchaser L.R. Wilson & Sons, Inc.), 157-58 (Jeffrey Miller, Purchasing Manager of distributor Campbell Chain of Cooper Tools, Inc.), 162-63 (Swaim), 164-67 (Kurt L. Charpentier, Secretary/Treasurer of distributor Coastal Wire Rope & Supply, Inc.), 167-69 (Ulrich), 193 (James Steindecker, President of importer-distributor Dragon Trading, Inc.).

<sup>71</sup> Hearing Tr. at 150-51 (Schloss), 153-56 (Larson), 157-58 (Miller), 162-63 (Swaim), 168 (Ulrich).

<sup>72</sup> *Id.* at 67 (Burks), 162-63 (Swaim), 165 (Charpentier).

<sup>73</sup> *Id.* at 150-51 (Schloss), 153-56 (Larson), 157-58 (Miller), 162-63 (Swaim), 179 (Ulrich).

<sup>74</sup> Table II-3, CR at II-10 and PR at II-6. \*\*\* reported they were “always” interchangeable, and \*\*\* reported “frequent” interchangeability. *Id.*

<sup>75</sup> Table II-4, CR at II-10 and PR at II-6.

<sup>76</sup> CR at II-12, PR at II-7.

<sup>77</sup> Hearing Tr. at 21-24 (Salanski), 36-38 (Richard Connor, former President of Macwhyte Company), 40-42 (Wallace), 47-49 (Burks).

On balance, the record indicates that, although quality differences limit fungibility between the subject imports from China and the domestic like product, sufficient fungibility remains for us to find a reasonable overlap of competition.

The record shows a greater degree of fungibility between the subject imports from China and India. Some subject merchandise from India is high-strength carbon steel wire rope, used in critical applications, but the majority of the subject merchandise from that country is of standard varieties.<sup>78</sup> All \*\*\* producers that made comparisons reported that the subject imports from China and India are “always” or “frequently” interchangeable.<sup>79</sup> Fourteen out of 16 responding importers that made comparisons reported that the two are “always,” “frequently,” or “sometimes” interchangeable.<sup>80</sup> The record suggests a greater degree of fungibility between the subject imports from India and the domestic like product than between the Chinese product and the domestic like product. Eight of the 10 reporting purchasers said subject imports from India and the domestic like product are used in the same applications.<sup>81</sup> Four of 8 purchasers ranked steel wire rope from India and the United States comparable in quality, with 3 rating the domestic product higher, and one rating the subject merchandise from India higher.<sup>82</sup> All producers that made comparisons stated that steel wire rope from the two sources are “always” or “frequently” interchangeable, and 14 of 17 importers that made comparisons said that the two were “always,” “frequently,” or “sometimes” interchangeable.<sup>83</sup>

The second factor limiting fungibility between subject imports and the domestic like product is that subject imports were more highly concentrated in galvanized carbon steel wire rope than the domestic like product. The galvanized products accounted for more than one-half (\*\*\* to \*\*\* percent) of subject imports, compared to only one to two percent of domestic production.<sup>84</sup> Interchangeability between galvanized carbon steel wire rope and other steel wire rope is limited.<sup>85</sup> Nevertheless, \*\*\* to \*\*\* percent of subject imports are ungalvanized, as is over 95 percent of domestic production, and a significant portion of producers, importers, and purchasers reported that the subject imports and domestic like product were at least sometimes interchangeable.<sup>86</sup>

The record is therefore mixed regarding whether there is a reasonable overlap of competition among the domestic like product and the subject imports from China and India. The subject imports and domestic like product are sold through overlapping channels of distribution, and were present throughout the period of investigation, and in all geographic areas of the United States. Fungibility among the products is limited by the lower quality of subject imports from China and, to a lesser extent, subject imports from India. The subject imports’ higher concentration in galvanized carbon steel wire rope also limits fungibility. Nevertheless, producers, importers, and purchasers generally indicated that subject product from China and India and the domestic like product are all at least sometimes interchangeable, and are often used in the same applications. On balance, we find a reasonable overlap of competition among the domestic like product and subject imports from both China and India. Therefore we cumulate the volume and effect of subject imports.

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<sup>78</sup> *Id.* at 163 (Swaim), 170 (Matthew Smith, Vice President Operations for purchaser Delmar Systems, Inc.), 228-29 (Smith; Ulrich; Harry L. Urech, President of importer Usha Martin Americas, Inc.).

<sup>79</sup> Table II-3, CR at II-10 and PR at II-6.

<sup>80</sup> Table II-4, CR at II-10 and PR at II-6.

<sup>81</sup> CR at II-12, PR at II-7.

<sup>82</sup> Table II-8, CR at II-14 and PR at II-9.

<sup>83</sup> Tables II-3 and II-4, CR at II-10 and PR at II-6.

<sup>84</sup> Tables C-3, D-1, D-2, D-5; CR at C-8, D-3, D-4, D-7; PR at C-3, D-3, D-4, D-5.

<sup>85</sup> *See* discussion of interchangeability in the discussion of the definition of the domestic like product, above.

<sup>86</sup> CR at II-8 to II-14, PR at II-5 to II-9.

## V. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.<sup>87</sup> In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>88</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>89</sup> In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>90</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>91</sup>

For the reasons discussed below, we determine that the domestic industry producing steel wire rope is not materially injured by reason of subject imports from China and India that are sold in the United States at less than fair value.

### A. Conditions of Competition

Several conditions of competition are relevant to our analysis in these investigations. First, steel wire rope is an established product which has hundreds of uses.<sup>92</sup> Although there is a wide range of applications for steel wire rope, both domestically produced and imported steel wire rope generally conform to one or more industry standards or governmental specifications. In general, the specifications establish minimum requirements for the materials used, finish, core, mechanical properties, fabrication, lay, dimensions, and weight and strength of the wire rope. Federal specification RR-W-410D is the most common standard; additional specifications have been developed by the American Petroleum Institute and the American Society of Mechanical Engineers.<sup>93</sup>

Second, although domestic and imported steel wire rope both generally conform to specifications, certain factors limit competition between them. More than one-half of subject imports are galvanized carbon steel wire rope, while less than two percent of domestic production is galvanized.<sup>94</sup> Many purchasers and distributors state that only domestic product is used for so-called “critical” applications: those in which failure of the rope could result in damage, injury, or death.<sup>95</sup> Similarly, various steel wire

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<sup>87</sup> 19 U.S.C. § 1673d(b).

<sup>88</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each {such} factor . . . {a}nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B); see also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>89</sup> 19 U.S.C. § 1677(7)(A).

<sup>90</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>91</sup> Id.

<sup>92</sup> CR at II-4 to II-6, PR at II-3 to II-4.

<sup>93</sup> CR at II-5, PR at II-3.

<sup>94</sup> Tables C-3 and D-1 to D-5; CR at C-8 and D-3 to D-7; PR at C-3, D-3 to D-5. Galvanized carbon steel wire rope accounted for slightly less than half of nonsubject imports during most of the period investigated. Tables D-2 and D-5, CR at D-4 and D-7 and PR at D-4 and D-5.

<sup>95</sup> Hearing Tr. at 67 (Burks), 150-51 (Schloss), 153-56 (Larson), 157-58 (Miller), 162-63 (Swaim), 165 (Charpentier), 168 (Ulrich).

rope distributors expressed concern over liability arising out of any failure by imported steel wire rope they might sell, particularly imports from China.<sup>96</sup>

Third, demand for steel wire rope in the U.S. market is relatively stable. Given the wide range of applications for steel wire rope, however, the market can, from time to time, exhibit a degree of volatility. Overall, apparent U.S. consumption increased from \*\*\* short tons in 1997, to \*\*\* short tons in 1998, and then fell to \*\*\* short tons in 1999.<sup>97</sup>

Fourth, the domestic industry underwent consolidation in 1998 and 1999, with two producers ceasing operations. The Rochester Corporation shut down its production plant in 1998, and Macwhyte exited the industry in 1999.<sup>98</sup> Some of the assets of these firms were purchased by the Wire Rope Corporation of America (“WRCA”), the largest domestic producer, which continued production at one former Macwhyte facility and plans to install some of the idled production equipment in its existing plants.<sup>99</sup>

Fifth, there is a substantial volume of nonsubject imports in the U.S. market.<sup>100</sup> Nonsubject imports accounted for \*\*\* percent of U.S. apparent consumption in 1997, and \*\*\* percent in 1998 and in 1999.<sup>101</sup> They accounted for \*\*\* percent of U.S. apparent consumption in interim 1999 and \*\*\* percent in interim 2000.<sup>102 103</sup>

## **B. Volume of Subject Imports**

Section 771(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>104</sup>

As an initial matter, we note that the volume of imports that are subject to our investigations has been reduced as a result of Commerce’s final negative dumping determinations with respect to Malaysia and the largest Chinese manufacturer, Fasten. As described below, we find that the volume of subject imports that remain, given the attenuated competition between subject imports and the domestic like product, and any increase in that volume, are not significant. The volume of subject imports from China and India increased from \*\*\* short tons in 1997 to \*\*\* short tons in 1998, but then declined to \*\*\* short

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<sup>96</sup> Id. at 67 (Burks), 162-63 (Swaim), 165 (Charpentier), 168 (Ulrich).

<sup>97</sup> Table IV-3, CR at IV-5 and PR at IV-2.

<sup>98</sup> Table III-1, CR at III-2 and PR at III-2.

<sup>99</sup> Id.

<sup>100</sup> Imports of steel wire rope from Thailand, Malaysia, and from Chinese manufacturer Fasten are nonsubject imports for purposes of these final determinations. See Prelim. Det. at 3 and 66 Fed. Reg. 12759, 12761 (Feb. 28, 2001).

<sup>101</sup> Table IV-3, CR at IV-5 and PR at IV-2.

<sup>102</sup> Id.

<sup>103</sup> Less than \*\*\* percent of domestic production is transferred internally for the production of a downstream product. CR and PR at VI-1 to VI-3. No party argued that the captive production provision applies. 19 U.S.C. § 1677(7)(C)(iv). We find the provision does not apply because at least two of its requirements are not met. The threshold factor is not satisfied, given the relatively small ratio of internal transfers to overall production. In addition, factor III is not satisfied, given that the steel wire rope sold in the merchant market is apparently used to make the same downstream products made from the internal transfers. See CR and PR at VI-1 to VI-3 and Petitioners’ Prehearing Brief at 35 n.103.

<sup>104</sup> 19 U.S.C. § 1677(7)(C)(i).

tons in 1999.<sup>105</sup> In interim 1999, the volume of subject imports was \*\*\* short tons, compared to \*\*\* short tons in interim 2000.<sup>106</sup>

U.S. producers' share of apparent U.S. consumption declined from \*\*\* percent in 1997 to \*\*\* percent in 1998, and then \*\*\* in 1999 at \*\*\* percent.<sup>107</sup> As a share of U.S. apparent consumption, measured by quantity, subject imports from China and India increased only \*\*\* from 1997 to 1999, (from \*\*\* percent in 1997, to \*\*\* percent in 1998, and to \*\*\* percent in 1999).<sup>108</sup> Thus, in the aggregate, subject imports did not account for a significant loss of market share by the domestic industry from 1997 to 1999. We note that nonsubject imports were more than \*\*\* times greater in volume than subject imports, and accounted for the vast majority of market share lost by the domestic industry between 1997 and 1999.<sup>109</sup>

The record also indicates that subject imports accounted for \*\*\* percent of U.S. apparent consumption in interim 1999, and \*\*\* percent in interim 2000.<sup>110</sup> The U.S. producers' share, however, remained \*\*\* during the same period, at \*\*\* percent in interim 1999, and \*\*\* percent in interim 2000. The increase in share by subject imports between interim 1999 and interim 2000 therefore came at the expense of nonsubject imports.<sup>111</sup> That subject imports displaced nonsubject imports is consistent with record evidence that galvanized carbon steel wire rope made up more than one-half of subject imports, and almost half of nonsubject imports, but only a small share of domestic production.<sup>112</sup>

On the basis of the above, we find that the volume of subject imports, in light of the attenuated competition between subject imports and the domestic like product, and the increase in that volume, both in absolute terms and relative to production or consumption in the United States, is not significant.

### **C. Price Effects of the Subject Imports**

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

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<sup>105</sup> The volume of imports from nonsubject countries was several times greater, and followed a similar pattern, increasing between 1997 and 1998, but then declining between 1998 and 1999. Table IV-1, CR at IV-2 and PR at IV-1.

<sup>106</sup> Id.

<sup>107</sup> Table IV-3, CR at IV-5 and PR at IV-2.

<sup>108</sup> Table IV-3, CR at IV-5 and PR at IV-2.

<sup>109</sup> Tables IV-1 and IV-3, CR at IV-2 and IV-5, PR at IV-1 and IV-2. In interim 2000, the volume of nonsubject imports was between \*\*\* and \*\*\* times the volume of subject imports. Table IV-1, CR at IV-2 and PR at IV-1.

<sup>110</sup> Table IV-3, CR at IV-5 and PR at IV-2.

<sup>111</sup> Id. Non-subject imports as a share of domestic apparent consumption were \*\*\* percent in interim 1999 and \*\*\* percent in interim 2000. Id.

<sup>112</sup> Tables C-3 and D-1 to D-5; CR at C-8 and D-3 to D-7; PR at C-3 and D-3 to D-5. U.S. production of galvanized steel wire rope in 1999 was only 1,021 short tons out of total steel wire rope production of 108,655 short tons, whereas \*\*\* short tons of subject imports were galvanized, out of \*\*\* short tons total subject imports. Id.

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>113</sup>

We consider underselling and price effects in the context of the conditions of competition for steel wire rope. As described previously, subject imports generally are lower in quality than the domestic like product. Moreover, galvanized carbon steel wire rope accounts for over half of subject imports but only a small share of domestic production. These factors limit substitutability between the domestic like product and subject imports, and therefore limit the potential effects of subject imports on domestic prices.

The Commission collected quarterly price information on seven types of steel wire rope, designated products 1 through 7.<sup>114</sup> The volume of sales of the domestic like product was very small in all but products 1 and 2 (consisting of bright carbon steel wire rope) and product 5 (consisting of galvanized carbon steel wire rope).<sup>115</sup> There was no clear downward trend in the price of domestically produced steel wire rope in any of these three product categories. For product 1, prices for the domestic product were highest at the end of the period of review.<sup>116</sup> Prices for domestic product 2 increased and then fell during the period, but ended at a level \*\*\* above their starting point.<sup>117</sup> Prices for the domestic product 5 ended \*\*\* lower than they began, but increased in each of the last three quarters.<sup>118 119</sup>

Importantly, domestic prices were relatively stable over the period of investigation, despite the fact that subject imports consistently undersold domestic steel wire rope in products 1, 2, and 5 by margins generally in excess of \*\*\* percent, and ranging from \*\*\* to \*\*\* percent.<sup>120</sup> Nor did underselling result in significant gains in market share by subject imports at the expense of the domestic like product, as described above.<sup>121</sup> That price underselling did not result in declining prices for the domestic like product or loss of market share reflects the limited substitutability between subject imports and the domestic like product. Additionally, although lost sales or lost revenues may constitute anecdotal evidence of direct price competition, there were few confirmed lost sales in these investigations, and the volume of the confirmed lost sales was relatively small.<sup>122</sup> On the basis of the conditions of competition in this industry and the

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<sup>113</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>114</sup> CR at V-4 to V-5, PR at V-3.

<sup>115</sup> Tables V-1 to V-6, CR at V-7 to V-12 and PR at V-5 to V-9.

<sup>116</sup> Table V-1, CR at V-7 and PR at V-5.

<sup>117</sup> Table V-2, CR at V-8 and PR at V-6.

<sup>118</sup> Table V-5, CR at V-11 and PR at V-9.

<sup>119</sup> Average unit values (“AUVs”) of commercial U.S. shipments of the domestic like product increased from 1997 to 1998, and from 1998 to 1999. Table III-3, CR at III-4 and PR at III-3. These AUVs were \*\*\* lower in interim 2000 than in interim 1999. *Id.* However, changes in domestic AUVs may reflect differences in prices only in part, because the mix of products represented may change over time. Hearing Tr. at 108-09 (Wallace) (testifying that the domestic industry shifted to the production of higher value products during the period of investigation). We therefore view AUV data with caution throughout this opinion.

<sup>120</sup> Tables V-7 to V-9, CR at V-20 to V-22 and PR at V-11 to V-13.

<sup>121</sup> Although the volume of sales of subject imports of products 1, 2, and 5 increased \*\*\* during the period investigated, they cumulatively represent only \*\*\* percent of subject imports. Compare table IV-2, CR at IV-4 and PR at IV-2 with tables V-1, V-2, and V-5, CR at V-7, V-8, V-11 and PR at V-5, V-6, and V-9.

<sup>122</sup> We regard some of the lost sales allegations made by petitioners with caution, and in particular those in which a domestic producer \*\*\*. CR at V-23, V-27 to V-29; PR at V-13 and V-15.

attenuated competition between subject imports and the domestic like product, we conclude that price underselling by the subject imports of the domestic like product was not significant.

We also find that subject imports did not have significant price depressing effects on the domestic like product. The record does not reflect any clear downward trend in prices for the domestic like product. Nor do we find that subject imports prevented to a significant degree price increases by the domestic industry that otherwise would have occurred. First, petitioners announced various price increases, which the record suggests were collected, in whole or in part, in at least some instances.<sup>123</sup> Second, domestic producers' cost of goods sold as a percentage of net sales increased very little, while their operating income was generally stable.<sup>124</sup> Third, because competition between subject imports and the domestic like product is attenuated, subject imports' ability to suppress price increases is similarly limited.

Accordingly, we find that subject imports did not have significant adverse price effects on the domestic like product.

#### **D. Impact**

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>125</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>126 127 128</sup>

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<sup>123</sup> Posthearing Brief of Ad Hoc Coalition of American Steel Wire Rope Importers at 5-7. Although petitioners assert that they could not ultimately sell at the higher announced prices, we do not find clear evidence in support of this contention. In addition, although we view AUVs as an imperfect reflection of prices, U.S. commercial shipment AUVs for the domestic like product increased from 1997 to 1999. Table III-3, CR at III-4 and PR at III-3.

<sup>124</sup> The domestic industry's cost of goods sold as a percentage of net sales was 75.0 percent in 1997, 75.2 percent in 1998, and 76.9 percent in 1999. In interim 1999 and interim 2000, the corresponding figures were 73.7 and 75.1 percent, respectively. Table VI-1, CR at VI-3 and PR at VI-2. The domestic industry generated operating income margins of 3.6 percent in 1997, 3.1 percent in 1998, 0.6 percent in 1999, 3.6 percent in interim 1999, and 4.8 percent in interim 2000. *Id.* As described in the following discussion of the impact of the subject imports, factors other than subject imports account for the decline in the domestic industry's operating income in 1999.

<sup>125</sup> 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." *Id.* at 885).

<sup>126</sup> 19 U.S.C. § 1677(7)(C)(iii); *see also* SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

<sup>127</sup> The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its final dumping determination, Commerce determined dumping margins of 38.63 percent for India, and 42.23 to 58.00 percent for China, except for Chinese producer Fasten, whose margin was de minimis. 66 Fed. Reg. 12759, 12761 (Feb. 28, 2001).

<sup>128</sup> Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. *See, e.g.*, Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final),

(continued...)

We find that the subject imports did not have a significant adverse impact on the domestic industry. While the industry's performance may not have been particularly strong during every year of the period investigated, we do not attribute any weakness to subject imports in material part. The U.S. industry's capacity remained essentially the same from 1997 to 1998, at 218,727 and 218,817 short tons, respectively, and fell to 197,717 short tons in 1999.<sup>129</sup> The decline in capacity in 1999 reflects the fact that domestic producer WRCA retired all but one of the production facilities it acquired from Rochester and Macwhyte.<sup>130</sup> Domestic production capacity was 123,715 short tons in interim 1999 and 135,535 short tons in interim 2000, consistent with \*\*\*.<sup>131</sup> The domestic industry's production fell from 127,833 short tons in 1997, to 118,047 short tons in 1998, and to 108,655 short tons in 1999.<sup>132</sup> However, production was higher in interim 2000, at 80,801 short tons, than in interim 1999, at 78,955 short tons.<sup>133</sup> Capacity utilization decreased from 58.4 percent in 1997 to 53.9 percent in 1998, and increased to 55.0 percent in 1999.<sup>134</sup> Capacity utilization was 63.8 percent in interim 1999 and 59.6 percent in interim 2000.<sup>135</sup> Capital expenditures increased substantially over the period, from \$5.8 million in 1997, to \$14.0 million in 1998, to \$16.7 million in 1999.<sup>136</sup>

U.S. producers' commercial U.S. shipments decreased over the period examined, from \*\*\* short tons in 1997 to \*\*\* short tons in 1998, and to \*\*\* short tons in 1999.<sup>137</sup> The value of commercial U.S. shipments also decreased, but to a lesser degree because unit values increased.<sup>138</sup> Between 1997 and 1999, U.S. inventories fell in absolute terms, but rose slightly as a ratio to U.S. shipments.<sup>139</sup> U.S. inventories were slightly lower in interim 2000 than in interim 1999, both in absolute terms and as a ratio to U.S. shipments.<sup>140</sup> The average number of production and related workers decreased from 1,603 in 1997 to 1,589 in 1999.<sup>141</sup> The hours worked followed a similar pattern, increasing slightly from 1997 to 1998, but declining overall.<sup>142</sup> These trends diverged in the interim periods, however, as the number of production and related workers fell yet hours worked increased.<sup>143</sup> Nonetheless, as with declines in industry capacity and capacity utilization over the period, we attribute much of the declines in U.S. shipments, number of production and related workers, and hours worked to the departure of Macwhyte and Rochester from the industry.

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<sup>128</sup> (...continued)  
USITC Pub. 2968 (June 1996).

<sup>129</sup> Table III-2, CR at III-3 and PR at III-3.

<sup>130</sup> CR at III-3 and PR at III-1.

<sup>131</sup> CR at III-3 and PR at III-1 (\*\*\*).

<sup>132</sup> Table III-2, CR at III-3 and PR at III-3.

<sup>133</sup> Id.

<sup>134</sup> Id.

<sup>135</sup> Id.

<sup>136</sup> Table VI-6, CR at VI-11 and PR at VI-6.

<sup>137</sup> Table III-3, CR at III-4 and PR at III-3.

<sup>138</sup> Id.

<sup>139</sup> Table III-4, CR at III-5 and PR at III-3.

<sup>140</sup> Id.

<sup>141</sup> Table III-5, CR at III-5 and PR at III-4.

<sup>142</sup> Id.

<sup>143</sup> Id.

As a share of net sales, the U.S. industry's operating income margin was 3.6 percent in 1997 and 3.1 percent in 1998, but fell to 0.6 percent in 1999.<sup>144</sup> However, the operating income margin was higher in interim 2000 at 4.8 percent than in interim 1999 at 3.6 percent.<sup>145</sup>

We have reviewed the record for evidence that subject imports adversely impacted the domestic industry. The domestic industry was profitable during the period examined, and although operating income was lower in 1999 than in 1997 or 1998, profits were higher in interim 2000 than in interim 1999, despite the fact that subject imports attained their highest market share in interim 2000. The decline in 1999 operating income is due almost entirely to \*\*\* incurred by \*\*\* that year, and that \*\*\*, as explained below, is not due to subject imports.<sup>146</sup> Operating income for the remainder of the industry \*\*\* during the period. Although we consider the industry as a whole in our analysis, the fact that the drop in operating income in 1999 is due largely to \*\*\* is relevant to our analysis of the impact of subject imports on the domestic industry.

Two factors appear to account for, at least in significant part, \*\*\* lower performance in 1999. First, \*\*\*. Second, \*\*\*.<sup>147</sup>

By contrast, there was no change in the volume, price, or any other factor affecting competition by subject imports in 1999 that was significant enough to account in a material way for lower profitability on the part of the domestic industry. Subject imports' market share increased less than \*\*\* from 1998 to 1999, from \*\*\* to \*\*\* percent.<sup>148</sup> While subject imports' market share was the highest in interim 2000, that was also the period the industry was most profitable.<sup>149</sup> In addition, prices collected on various subject products did not exhibit a clear downward trend, and AUVs for the subject imports decreased only \*\*\* from 1998 to 1999, from \$\*\*\* per short ton to \$\*\*\* per short ton.<sup>150</sup> Previously, from 1997 to 1998, the domestic industry lost \*\*\* in market share, but nonsubject imports accounted for the bulk of the loss (\*\*\*).<sup>151</sup>

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<sup>144</sup> Table VI-1, CR at VI-3 and PR at VI-2.

<sup>145</sup> *Id.* We note that \*\*\*. Inclusion of those sales in the financial data would result in an industry operating income, as a percentage of net sales, of \*\*\* percent in 1999 and \*\*\* percent in interim 1999. CR at VI-2 to VI-3, PR at VI-3.

<sup>146</sup> CR at VI-4, PR at VI-3; table VI-2, CR at VI-6 to VI-7 and PR at VI-3; Hearing Tr. (in camera portion) at 238-240 (Daniel W. Klett, on behalf of Respondents), and Respondents' Confidential In Camera Hearing Exhibits 1-3.

<sup>147</sup> The unit value of \*\*\* sales \*\*\*. CR at VI-4, PR at VI-3; table VI-2, CR at VI-6 to VI-7 and PR at VI-3; Hearing Tr. (in camera portion) at 238-240 (Klett), and Respondents' Confidential In Camera Hearing Exhibits 1-3. \*\*\*.

<sup>148</sup> Table IV-3, CR at IV-5 and PR at IV-2.

<sup>149</sup> We exercise caution in comparing interim periods with full-year periods. In any regard, the market share of subject imports and the domestic industry's operating income were both higher in interim 2000 than in interim 1999.

<sup>150</sup> Tables IV-1, V-1 to V-6, CR at IV-2, V-7 to V-12, and PR at IV-1, V-5 to V-9. Although, as noted earlier, we view AUVs as an imperfect proxy for prices in general, the record does not indicate that the mix of subject imports changed significantly between 1998 and 1999 (or during the entire period investigated).

<sup>151</sup> While two producers, Rochester and Macwhyte, ceased operations during the period of investigation, we do not attribute their exit to subject imports because the volume, given the attenuated competition between subject imports and the domestic like product, and increase in volume of subject imports were not significant, and subject imports did not have significant negative price effects. Subject imports showed their largest increase in interim 2000, which was after the closures. Although there was testimony implicating subject imports in Macwhyte's closure (Hearing Tr. at 35-38 (Connor)), at the time of the shutdown Macwhyte was reported to have attributed the company's closure to "overcapacity, shrinking demand for wire rope and increased foreign competition,

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Accordingly, for the reasons stated above, we determine that an industry in the United States is not materially injured by reason of imports of steel wire rope from China and India that are sold in the United States at less than fair value.

## **VI. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS**

### **A. In General**

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”<sup>152</sup> The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.<sup>153</sup> In making our determination, we have considered all statutory factors that are relevant to these investigations,<sup>154</sup> including the rate of the increase in the volume and market penetration of subject imports, unused production capacity, and any substantial inventories of the subject merchandise.

### **B. Cumulation for Purposes of Threat**

Cumulation for threat analysis is treated in section 771(7)(H) of the Act.<sup>155</sup> This provision permits the Commission, to the extent practicable, to assess cumulatively the volume and effect of imports for purposes of conducting its threat analysis.<sup>156</sup> In this respect, the provision preserves the Commission’s discretion to cumulate imports in analyzing threat of material injury. The limitations concerning what imports are eligible for cumulation and the exceptions for cumulation are applicable to cumulation for threat as well as to cumulation for present material injury.<sup>157</sup> In addition, the Commission also considers whether the imports are increasing at similar rates in the same markets, whether the imports have similar margins of underselling, and the probability that imports will enter the United States at prices that would have a depressing or suppressing effect on domestic prices of that merchandise.<sup>158</sup>

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<sup>151</sup> (...continued)  
particularly from South Korea.” Prehearing Brief of Respondents at Exh. 7.

<sup>152</sup> 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

<sup>153</sup> 19 U.S.C. § 1677(7)(F)(ii).

<sup>154</sup> 19 U.S.C. § 1677(7)(F)(i). Factor I is inapplicable to these investigations because no countervailable subsidy is involved. Factor VII is also inapplicable because these investigations do not involve imports of a raw agricultural product.

<sup>155</sup> 19 U.S.C. § 1677(7)(H).

<sup>156</sup> See Kern-Liebers v. United States, 19 CIT 87, Slip Op. 95-9, at 49-51 (Jan. 27, 1995).

<sup>157</sup> To be eligible for cumulation for threat analysis, the imports must be from countries with respect to which petitions were filed or investigations were self-initiated on the same day, and the imports must compete with each other and with the domestic like product in the United States market. Cumulation for threat analysis is precluded in the four instances in which it is precluded for material injury analysis.

<sup>158</sup> See Torrington Co. v. United States, 790 F. Supp. 1161, 1172 (Ct. Int’l Trade 1992) (affirming Commission’s determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject

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We determine to cumulate subject imports for purposes of our threat determination. In addition to our earlier analysis regarding a reasonable overlap of competition between subject imports and the domestic like product, we do not find that the trends in the volumes and prices of subject imports from China and India were markedly different, and we therefore exercise our discretion to cumulate. Throughout the period investigated, subject imports from India accounted for roughly \*\*\* of subject imports.<sup>159</sup> The volume of subject imports from India fluctuated \*\*\* than the volume of subject imports from China from 1997 to 1999, but both were higher in interim 2000 than in interim 1999.<sup>160</sup> In addition, AUVs of subject imports from the two countries each fluctuated in a relatively narrow range.<sup>161</sup>

### C. Statutory Threat Factors

Based on an evaluation of the relevant statutory factors, we find that the domestic industry is not threatened with material injury by reason of the subject imports sold in the United States at less than fair value.

The record shows no indication of increased capacity in China or India during the period of investigation that would indicate the likelihood of substantially increased imports of subject merchandise, and capacity is projected to be \*\*\* in 2000 and 2001 as it was in 1999.<sup>162</sup> Capacity utilization for the industry in China, which was estimated at \*\*\* percent in 1999, showed projected increases to rates of \*\*\* percent for 2000 and \*\*\* percent for 2001.<sup>163</sup> For the industry in India, capacity utilization was \*\*\* percent in 1999, and is projected to increase to \*\*\* percent in both 2000 and 2001.<sup>164</sup> While the foreign producers' capacity utilization figures reflect some available excess capacity, unused capacity existed during the period investigated, but did not result in materially injurious exports to the United States. Moreover, unused capacity declined late during the period of investigation, and it is projected to decline in the imminent future.<sup>165</sup>

The home markets absorbed a large share of steel wire rope production in both China and India. In 1999, the home market accounted for \*\*\* percent of total steel wire rope shipments by Chinese producers that produced subject merchandise, although that figure is projected to decline to \*\*\* percent in 2000.<sup>166</sup> For the Indian industry, the home market accounted for \*\*\* percent of shipments in 1999, and it is projected to account for \*\*\* percent of shipments in 2000 and 2001.<sup>167</sup>

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<sup>158</sup> (...continued)

countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

<sup>159</sup> Table IV-1, CR at IV-2 and PR at IV-1.

<sup>160</sup> Id.

<sup>161</sup> Id.

<sup>162</sup> Tables VII-1 and VII-2, CR at VII-2 and VII-5 and PR at VII-1 and VII-2.

<sup>163</sup> Table VII-1, CR at VII-2 and PR at VII-1.

<sup>164</sup> Table VII-2, CR at VII-5 and PR at VII-2.

<sup>165</sup> Tables VII-1 and VII-2, CR at VII-2 and VII-5 and PR at VII-1 and VII-2. Available capacity for both countries was lower in interim 2000 than in interim 1999. Id.

<sup>166</sup> Table VII-1, CR at VII-2 and PR at VII-1.

<sup>167</sup> Table VII-2, CR at VII-5 and PR at VII-2. The projected increase in India's home market shipments was attributed in part to increased construction activity following an earthquake in that country in January of 2001. Prehearing Brief of Usha Martin at 12.

The volume of subject imports declined from 1998 to 1999, from \*\*\* short tons to \*\*\* short tons.<sup>168</sup> While interim period data for 2000 showed an increase in volume compared to interim 1999, the subject imports' gain in market share was achieved entirely at the expense of nonsubject imports.<sup>169</sup>

While an antidumping finding and price undertaking by the European Community in August 1999 against steel wire rope from China and India<sup>170</sup> may suggest that the United States will become an attractive market for increased imports from China and India, we do not find evidence that any increase is likely to be significant. The record indicates that subject producers in these countries have, in large part, already found other markets to absorb that product.<sup>171</sup> Moreover, the increase is not likely to be sufficient to cause material injury in the imminent future because of the attenuated competition between subject merchandise and the domestic like product, due to the differences in quality and product mix discussed earlier.

Inventories of subject merchandise in the United States have increased, although actual inventories are smaller than the Commission's figures, which include nonsubject merchandise produced by Fasten.<sup>172</sup> Higher inventories may result in higher U.S. shipments, but we do not find the increase to be of such a magnitude as to present an imminent threat of material injury.

\*\*\*, and \*\*\*, a Chinese producer, reported producing other products on the same equipment used to make steel wire rope.<sup>173</sup> While this indicates some ability to shift production among different products, there is no evidence that a shift of significant production to steel wire rope is imminent, nor is there evidence of any incentive to make such a shift. In any regard, much of the subject merchandise that is exported to the United States is concentrated in galvanized carbon steel wire rope, which accounts for only a small share of domestic production.<sup>174</sup>

The record indicates that no significant increase in the volume or market penetration of subject imports is imminent. Although subject producers had the ability to increase significantly the volume of their exports to the U.S. market during the period of investigation, they did not do so. There is no persuasive evidence in the record that indicates that this behavior will change in the imminent future. We also find that subject imports are not likely to enter the United States at prices that will depress prices for the domestic like product. Prices for the subject imports are already significantly lower than prices for the domestic like product, yet prices for the latter are steady or increasing, and any market share lost by the domestic industry to subject imports has been small. We see no evidence that competition between subject imports and the domestic like product will become less attenuated in the imminent future.

Absent likely significantly higher volumes, or the likelihood that subject imports will enter the United States at prices that will depress prices for the domestic like product, we find that subject imports will likely not have significant imminent adverse effects on the domestic industry, or its existing development and production efforts. The domestic industry generated profits throughout the period of

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<sup>168</sup> Table IV-1, CR at IV-2 and PR at IV-1.

<sup>169</sup> Table IV-3, CR at IV-5 and PR at IV-2.

<sup>170</sup> CR at VII-4 to VII-5, PR at VII-2 .

<sup>171</sup> Respondents' Posthearing Brief at Exh. 12 (showing Chinese producers increased exports to Asia, Canada, and other third countries). Moreover, Fasten, which is the only Chinese manufacturer participating in these investigations that appears to \*\*\*, is no longer subject to these investigations, having received a de minimis margin at Commerce. See Chinese foreign producers' questionnaire responses. Thus, public data on Chinese exports to the European Union overstate the degree of possible diversion of Chinese subject imports from the European Union to the United States, because they presumably include exports by Fasten. See also table VII-2, CR at VII-5 and PR at VII-2 (showing exports from India to non-U.S. markets of \*\*\* short tons in projected 2000 compared to \*\*\* short tons in 1999).

<sup>172</sup> Table VII-3, CR at VII-6 and PR at VII-2.

<sup>173</sup> CR at VII-3 to VII-4, PR at VII-1 to VII-2.

<sup>174</sup> Tables C-3, D-1, D-2, and D-5; CR at C-8, D-3, D-4, and D-7, PR at C-3, D-3 to D-5.

investigation. As discussed earlier, the record suggests that the reduction in the domestic industry's level of operating income in 1999 reflected factors other than subject imports, and the industry's higher profitability in interim 2000, as compared to interim 1999, coincided with the period of subject imports' highest U.S. market share.

For the foregoing reasons, we find that the U.S. industry producing steel wire rope is not threatened with material injury by reason of subject imports from China and India.

### **CONCLUSION**

For the reasons stated above, we determine that an industry in the United States is not materially injured, or threatened with material injury, by reason of imports of steel wire rope from China and India that are sold in the United States at less than fair value.